

No. 9/4/87-6Lab/5748.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s. The Haryana Handloom Weavers Apex Co-operative Society Ltd., No. 2, Industrial Area, Panipat.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 204/1982

Between

SHRI RAM DASS, C/O. BHARTIYA MAZDOOR SANGH G.T. ROAD, PANIPAT AND THE
MANAGEMENT OF M/S. THE HARYANA HANDLOOM WEAVERS APEX CO-
OPERATIVE SOCIETY LTD., NO. 2, INDUSTRIAL AREA, PANIPAT.

Present—

Shri Karan Singh, A. R. for the workman.

Shri C. P. Bhatia, A.D.A. for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following disputes between Shri Ram Dass workman and the Management of M/s. The Haryana Handloom Weavers Apex Co-operative Society Ltd., No. 2, Industrial Area, Panipat to this Tribunal for adjudication :—

Whether the termination of service of Shri Ram Dass was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of order of reference, notices were issued to the parties who appeared.

3. The petitioners case is that he was employed on 31st December, 1979 on daily wages by the respondent society and he worked there continuously. He alleged that the respondent-management dispensed with his services on 5th April, 1982 without issuing him any charge-sheet or notice. He alleged that after termination of his service, new hands namely Prem Parkash, Mukesh, Harvinder, Rajesh were recruited. He has challenged the order of termination of his services as illegal, unjustified and *mala fide*. He has prayed for reinstatement with continuity of service and with full back wages.

3. The respondent society filed written statement in which they controverted the stand of the petitioner. It was pleaded that Ram Dass was working on daily wages as Helper in the society purely on temporary basis. It was also pleaded that his appointment was made on the condition that his services can be dispensed with without serving any notice. It was pleaded that his services have been terminated in accordance with terms and condition of appointment and fresh hands have been appointed who were highly educated and fulfilled requisite qualification for the job of sales manager and salesman.

4. On the pleadings of the parties, the following issues were framed by my predecessor :—

(1) Whether the termination of services of Shri Ram Dass was justified and in order ? If not, to what relief is he entitled ?

5. The respondent-Management examined Shri Baljit Singh Senior Executive Officer MW-1 whereas the petitioner examined Shri Sahib Ram WW-1 Clerk of the respondent Society and himself stepped in the witness box as WW-2.

6. During the pendency of the reference, the respondent filed an application that the Industrial Tribunal has no jurisdiction to try this reference in view of the provisions of Haryana Co-operative Societies Act. The application was answered against the respondent by Shri R. N. Batra on 24th April, 1985 and the writ petition filed by the respondent-Society challenging the order passed by my predecessor was ultimately dismissed by High Court on 1st September, 1986 (Civil Writ Petition No. 2824 of 1985).

7. I have heard Shri Karan Singh authorised representative for the workman and Shri C. P. Bhatia, A.D.A/authorised representative for the Management. My findings on the aforesaid issues are as under :—

Issue No. 1 :

8. The petitioner was appointed on 31st December, 1979 on the basis of the order Exhibit M-2 on daily wages at the rate of Rs. 420 (consolidated pay) per month. His services were terminated on 21st April, 1981,—*vide* order Exhibit M-4. He submitted an application Exhibit M-5 for fresh appointment on 24th April, 1981. He was recruited on daily wages with effect from 24th April, 1981 in the head office in Central Stores in the pay scale of salesman-cum-helper i. e. Rs. 400—660. It was stipulated therein that he can be relieved at any time without assigning any notice to him. Copy of the order is Exhibit M-6. Ultimately his services were terminated on 5th April, 1982 by simpliciter order Exhibit W-3. The aforesaid position is amply established by the testimony of Baljit Singh MW-1, Sahib Ram WW-2 and has not been disputed during the arguments.

9. Thus it would be seen that the petitioner has been in continuous service of the respondent Society from 24th April, 1981 to 5th April, 1982. It is well settled that immediately preceding the date of termination of his service, the workman has not worked for less than 240 days within a period of 12 months under the employer, he would be deemed in continuous service for one year under Section 25 B(2)(a)(ii) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and he would be entitled to retrenchment compensation under Section 25-F of the Act. It is also well settled that termination of services of such employee without complying section 25-F of the Act would render the order of termination void *ab initio* entitling him to a declaration for continuation in service.

10. As already noticed above, the petitioner has rendered service for a period of more than 240 days with the respondent prior to the date of termination of his service during last 12 calendar months. So the respondent could not have terminated his services without complying with mandatory provisions of Section 25-F of the Act. Admittedly there was no compliance by the respondent Society of the provisions of Section 25-F of the Act. It is admitted by Baljit Singh Senior Executive Officer MW-1 of the Society that no notice was ever given to the petitioner before termination of his service. It was also admitted by him that new hands were recruited after termination of his service. Thus the services of the petitioner have been dispensed with in utter disregard of the provisions of Section 25-F of the Act which renders the order of termination void *ab initio*.

11. It was contended that the services of the petitioner were dispensed with in accordance with stipulation in the order of appointment and as such his termination can not be said to be retrenchment as defined in Section 2(00) of the Act. This plea has got no force. The termination by the employer for any reason whatsoever would constitute retrenchment under Section 2(00) of the Act except in cases excepted in that section itself. In the present case, the termination of the services of the petitioner does not fall under any of the excepted or excluded category. So it would be retrenchment within the meaning of word as defined in section 2(00) of the Act.

12. In the result I hold that termination of the services of the petitioner is void *ab initio*, invalid and inoperative. He is thus ordered to be reinstatement with continuity of service and with full back wages. The reference is answered in favour of the workman accordingly. No order as to cost.

Dated, the 9th June, 1987.

S. B. AHUJA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 765, dated the 30th June, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government Haryana Labour and Employment Departments, Chandigarh as required under Section 15 of the Act.

S. B. AHUJA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.